months prior to the making of an adjudication order. In the case of *Ex parte Bonham, In re Tollemache*[1], the Master of the Rolls stated: — "I am prepared to lay this down, that when the only evidence of a debt is a judgment, and the judgment has been recovered after the act of bankruptcy, the judgment debt cannot be proved in the bankruptcy." This decision is, in my opinion, applicable to the law of bankruptcy in force in the Federation. In this case the only evidence before the Official Receiver of the debt in respect of which the proof was lodged was the judgment of this Court in Civil Suit No. 279 of 1952. This judgment was obtained after the petition to wind up the Malay National Banking Corporation Limited was presented, and if it is material the judgment in default was obtained by Mohamed Store subsequent to the date of the presentation of the petition with the knowledge of Mohamed Store that a petition had been presented. In these circumstances I am doubtful whether any part of the proof of Mohamed Store in the winding-up should have been allowed. However that may be, I am satisfied that the Official Receiver was acting within his legal rights in rejecting the proof to the extent of $30,000.

As I have already said, the case was argued at some length and many cases were cited to me on other points arising out of the rejection by the Official Receiver, but having regard to the conclusion to which I have come I do not think it necessary for me to refer to any of the other points raised on the hearing of this motion or to the cases cited in support of the arguments.

The motion is dismissed with costs.

Motion dismissed.

Solicitors: *Shearn Delamore & Co.*

Re CHEW KEAN KOR

[O. C. J. (Spenser Wilkinson J.) September 9, 1955]

[Penang — Bankruptcy No. 46 of 1954]

Bankruptcy —Duty of Official Assignee to realise debtor's assets for the benefit of creditors — Discretion.

It is the duty of the Official Assignee to realise the debtor's assets for the benefit of creditors, and the Court will not interfere with the discretion of the Official Assignee even at the instance of a creditor, unless his actions are so utterly unreasonable and absurd that no reasonable man would so act.

Case referred to:—

(1) *Ex p. Lloyd, Re Peters* 47 L.T. 64.

BANKRUPTCY MOTION.

Debtor in person.

Balwant Singh (Asst. Official Assignee) for the Official Assignee.

Spenser Wilkinson J.: — This was a motion by the debtor for an order restraining the Assistant Official Assignee from selling by public auction certain lands belonging to the debtor.

As I understand the law of bankruptcy it is the duty of the Official Assignee to realise the debtor's assets for the benefit of creditors, and the Court will not interfere with the discretion of the Official Assignee even at the instance of a creditor, unless his actions are so utterly unreasonable and absurd that no reasonable man would so act (see *Ex parte Lloyd, Re Peters*[1]).

The debtor was unable to adduce any good reason why his property should not be sold. He made a rather vague suggestion that he had asked some friend in Thailand to send him money to enable him to settle with his creditors, but it did not appear to me that there was any reasonable prospect that this friend either could or would supply this money within a reasonable time.

It appeared to me, therefore, that there was no good reason for this Court to interfere with the discretion of the Official Assignee and I, therefore, dismissed the application with costs.

Application dismissed.

CHEW KOW HIN v. WEE TRADING & CO.

[O. C. J. (Spenser Wilkinson J.) September 9, 1955]

[Penang — Civil Suit No. 15 of 1955]

Contract — c.i.f. Contract — Construction — Whether in c.i.f. contract the seller may tender goods instead of documents.

In this case the plaintiff claimed for the price of goods bargained and sold, to wit fountain pens. The defence was that the contract in question was a c.i.f. contract and that the plaintiff having failed to deliver to the defendants the proper shipping documents was not entitled to recover.

Held: under a c.i.f. contract a tender of the proper documents is essential and the seller is not at liberty to tender the goods instead of the documents.

In a mercantile contract where words are partly printed and partly typed the typed words are to be looked upon as the better indication of the intentions of the parties.

CIVIL SUIT.

Lee Thean-Chu for the plaintiff.

Sonni Pillai for the defendants.

Spenser Wilkinson J.: — The claim in this case was for the price of goods bargained and sold, the goods in question being 600 fountain pens with chromium plated nibs and 600 fountain pens with 14 carat gold nibs. The contract sued upon is contained in an indent, which is a printed form containing the

main terms of the contract typed in on the front thereof and referring to printed general conditions on the back.

Mr. Sonni Pillai on behalf of the defendants raised two defences. The first was that from the contract as a whole it appeared quite clearly that it had been entered into by the plaintiff as an agent and not as principal and that the plaintiff had no right to sue thereon. In support of this contention he referred to Article 130 at page 261 of *Bowstead* on Agency, 10th edition, which sets out the occasions upon which an agent may sue in his own name on contracts made by him on behalf of his principal.

One of the occasions, however, on which such an agent may sue in his own name is where he contracts personally. As stated in Article 116 of the same textbook at page 236 :—

"The question whether an agent who has made a contract on behalf of his principal is to be deemed to have contracted personally ..... depends on the intention of the parties to be deduced from the nature and terms of the contract.

Where a home agent contracts in England or Wales, on behalf of a foreign principal he is presumed to contract personally, unless a contrary intention plainly appear from the terms of the contract or the surrounding circumstances."

The plaintiff in this case being a "home agent", if the contract was made on behalf of a principal (which I doubt), he was in my opinion presumed to contract personally, and I can find no contrary intention in the terms of the contract. I do not, therefore, think there is any substance in this first point.

The main defence, however, is that the contract in question is a c.i.f. contract and that the plaintiff, having failed to deliver to the defendants the proper shipping documents, is not entitled to recover.

I agree with the statement in *Carver's* Carriage of Goods by Sea, 9th edition at page 744 :—

"Not every contract expressed to be a c.i.f. contract is one, strictly speaking. Business men use the term quite loosely, and in each case the actual terms of the contract in question must be considered."

Both parties gave oral evidence and no objection was taken on either side to any of this evidence. I allowed it to be given because evidence to show in what manner the language of a document is related to existing facts is admissible under the sixth proviso to section 92 of the Evidence Ordinance. Certain parts of the oral evidence given such, for example, as the fact that confirmation from the suppliers was in fact received, were I think admissible. Generally speaking, however, I am of opinion that in construing the contract I must look at its terms and must ignore any evidence given by the parties as to what they thought the contract meant. In case, however, any question with regard to the evidence may arise hereafter I think it right to say that I found the plaintiff a most unsatisfactory witness and where there is any conflict between the evidence given by the plaintiff and that given by the partner of the defendant firm who gave evidence I prefer the latter.

Before dealing with the terms of the contract itself there are two points arising out of the evidence which I think are of some importance. The first is that the price charged in the contract is clearly the same price as that quoted by the German suppliers for similar goods delivered c.i.f. Penang by air whereas in fact the goods were brought to Penang by the plaintiff by sea. The other point is that there seemed to me at first sight no good reason why the defendants should, as a matter of practical business, refuse to accept delivery of the goods themselves rather than rely upon their strict legal rights to the shipping documents. It appeared, however, from the evidence given on behalf of the defendants that the computation of duty when importing the goods from Penang into other parts of the Federation would vary according as they were or were not imported with the original shipping documents and in their original packing. The reliance of the defendants upon their legal rights in this case is, therefore, more than a mere technicality, because it was well known to both parties that the goods were wanted in Kota Bharu, so that if the defendants had accepted the goods instead of the documents they would not have got what they bargained for.

Looking at the contract as a whole I have come to the conclusion that it was in fact a c.i.f. contract. The expression "c.i.f." appears three times on the face of the contract. First against the printed clause "Prices understood :" the word "C.I.F. Penang" are typed. Secondly, in the description of the goods after setting out the details of the 600 pieces of fountain pens with nibs in chromium plated we find the following :—

"C.I.F. Penang £302. 7s. 9d."

and against the description of the 600 pieces of fountain pens with nibs in gold we find :—

"C.I.F. Penang £404. 17s. 11d."

In addition in the space alongside the printed word "Insurance" we have typed in the words "Included in price with claims payable in Penang". Finally, against "Terms of Payments" we have typed in :—

"30 days D/P through The Eastern Bank Ltd., Penang".

At the foot of the document appears the following note :—

"Notes for Confirmers:
Please draw on Indentors on 30 days' sight.
Documents against payment,
through The Eastern Bank Ltd., Penang."

Some of the general conditions printed on the back appear to be somewhat inconsistent with a c.i.f.

contract, but I think it is well established that in a mercantile contract where the words are partly printed and partly typed the typed words are to be looked upon as the better indication of the intentions of the parties.

The contract appears to me to contain all the *indicia* of a c.i.f. contract, and I hold that that is what it is.

I think there is no doubt on the authorities that under a c.i.f. contract a tender of the proper documents is essential and that the seller is not at liberty to tender the goods instead of the documents as was done in this case.

In my opinion, therefore, the plaintiff's claim that this was an out-and-out sale of goods by them to the defendants must fail, and there must be judgment for the defendants with costs.

Claim dismissed.

Solicitors : *Lee Thean-Chu; Pillai, Lim, Lee & Hwang.*

TAN AH LENG v. REG.

[A. Cr. J. (Rigby J.) September 17, 1956]

[Penang — Criminal Appeal No. 21 of 1956]

Societies Ordinance, 1949, ss. 11 & 14 — Membership of unlawful society — Presumption from tattoo marks — Rebuttal — Evidence.

Where a person is found with tattoo marks on his body indicating that he is a member of an unlawful society, the onus is on him to rebut the presumption under section 14 of the Societies Ordinance, 1949 that he is a member of that unlawful society.

The presumption under section 14 can be rebutted only by showing that whatever tattoo marks might be upon him he had no conscious knowledge that it was, in fact, the insignia of an unlawful society.

Case referred to :—

(1) *Sin Yat Chi v. R.* (1949) M.L.J. 117.

CRIMINAL APPEAL.

Triptipal Singh for the appellant.

P. G. Clough (Federal Counsel) for the respondent.

The facts appear sufficiently from the judgment below.

Rigby J. : — The appellant in this case, a young man aged 21, was charged with being a member of an unlawful society, contrary to the provisions of section 11 of the Societies Ordinance (No. 28 of 1949).

The particulars of the charge allege that he, on the 19th February, 1956, was a member of an unlawful society, to wit, the 36 Group Society, which is neither registered nor exempted under the provisions of the Ordinance.

He was convicted on the charge preferred against him and, according to the record, sentenced to pay a fine of $200 or two months' imprisonment in default of payment, and to six months' imprisonment.

He now appeals against both conviction and sentence. He was refused bail and has, in fact, been in custody since the date of his conviction, 19th June, 1956.

As to the matter of sentence. Either the offence, on its merits, warranted the imposition of a fine or it warranted a term of imprisonment. I find it difficult to appreciate the necessity for the imposition of a fine and imprisonment.

The facts of the case were briefly as follows :—

At about 8.40 p.m. the occupants of a police radio car were travelling along the Esplanade Road and when they were about in front of the Town Hall they saw two cyclists coming towards them from the direction of Light Street. They called upon them to stop. Why they called upon them to stop is not apparent. It may well be, of course, that they were simply cycling without lights. However, the cyclists failed to stop and rode off in the opposite direction. The Police gave chase and apprehended both cyclists. One of them was the appellant. They were searched and nothing found upon them. They were then taken to the Police Station. It was then found that the appellant had the tattoo marks of an eagle and a snake on his right shoulder. Hence this charge.

At the trial, Mr. Gee Kok Weng, a Senior Chinese Affairs Officer, Penang, gave an interesting discourse on the origin and history of Chinese secret societies both in China and in Malaya. He stated that the designs of a snake and an eagle, whether severally or jointly, were frequently used as tattoo marks of societies and that the tattoo marks of an eagle and a snake facing each other was the insignia of a tiger general.

The specific charge against the accused was that he was a member of the 36 Group Society. It is curious to observe that no question at any time was put to the witness linking — or endeavouring to link — the eagle and snake tattoo or insignia with the 36 Group Society until the witness had concluded his testimony. It was only then that, in reply to a question from the learned Magistrate, he said :—

"The tattoo mark on accused's right arm has triad significance. It belongs to the 36 group. It also belongs to the 108 Group."

Now the actual tattoo marks on the appellant's right shoulder consisted of an eagle and a snake and a tree stump — the snake was interwoven round the tree stump. The witness admitted that such knowledge as he possessed in these matters was primarily based on books and documents that he had seen and